

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.233 of 2011

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M/S Raj Engcon Projects (I) Limited, a company registered under the Indian Companies Act 1956, having its registered office at present at 62, Nalini Seth Road, First Floor, Kolkata-700007 and Corporate Office at Raj Tower, Boring Road Crossing, Patna-800001, through its director and authorized signatory Dhanraj Singh, son of Late Gagandeo Singh, resident of Raj Niketan, Mohanpur, New Punaichak, P.S. Shastrinagar, Town and District-Patna-800023.

.... Plaintiff in the court below-Appellant.
Versus

1. M/S Sahara India Housing Limited having its Head Office/Registered Office at Sahara India Bhawan, I Kapporthala Complex, Aliganj, Lucknow-226020 through its authorized signatory Sri N.K. Pal, the then Regional Worker, Regional Office, Patna, at present being Zonal Manager, Zonal Office of its sister concern Sahara India Financial Corporation Limited having its Zonal Office at Raj Tower, Boring Road Crossing, Patna-800001, P.S. Budha Colony, P.O. Boring Canal Road, District-Patna.
2. M/s. Sahara Indian Financial Corporation Limited formerly known as Sahara India Savings and Investment Corporation Limited having its registered office at Sahara India Bhawan, I Kapporthala Complex, Aliganj, Lucknow-226020 and its Zonal Office at Raj Tower, Boring Road Crossing, Patna-800001 through its Managing Director Worker and authorized signatory Shri Subrato Roy.
3. Sri D.K. Srivastava, the then Deputy Senior Coordination Worker, Zonal Office, Patna, in the office of Sahara India, Partnership firm having its registered office at Sahara India Bhawan, I Kapoorthala Complex, Aliganj, Lucknow-226020, later on posted as Chief Controller, Zonal Office, Sahara India Financial Corporation Limited having its Branch Office at Raj Tower, Boring Road Crossing, Patna-800001, P.S. Budha Colony, P.O. Boring Canal Road, Town and District-Patna, presently posted at its Registered Office at Lucknow as Executive Director at Sahara India Bhawan, 1, Kapoorthala Complex, Aliganj, Lucknow-226020.

.... Defendants in the court below-Respondents.

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Appearance :

For the Appellant : M/s. Ray Shivaji Nath, Senior Advocate, Rajendra Prasad Singh, Bharat Bhushan. Ray Saurabh Nath, Advocates.
For the Respondents : Mr. Shashi Shekhar Dwivedi, Senior Advocate, Dr. Umesh Shankar Prasad, Senior Advocate, M/s. Ashok Kumar Jha And Kamala Kant Tiwary, Advocates.

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
CAV JUDGMENT

Date: 14 -08-2015

This is plaintiff's appeal against the order dated 15.09.2011

passed in Eviction Suit No.19 of 2008, whereunder the Sub Judge-IV, Patna, allowed the applications of the defendants-respondent nos.1 and 2 filed under Order VII Rule 11 (a) and (d) of the Code of Civil Procedure, rejecting the plaint of the plaintiff-appellant.

2. In brief the case is that the plaintiff is the absolute owner of the multistoried building situated at Boring Canal Road, Patna, consisting of basement ground to seventh floors, which is popularly known as “Raj Tower”, over an area of 23,328 square fts. The defendant no.3, Sri D.K. Srivastava, while working in the office of M/s Sahara India having its head/registered office at 1, Kapoor Thalla Complex, Aliganj, Lucknow, as Deputy Senior Coordination Worker in the Zonal Office, Patna, situated at 2nd Floor, Mona Commercial Complex, East Gandhi Maidan, approached the plaintiff in the month of November 1993 for taking the part of the Raj Tower Building comprising part of the basement and entire 3rd to 7th floors on monthly rent for a fixed period of eleven months. The plaintiff agreed and let out the same to M/s. Sahara India on a monthly rent of Rs.52,250 and maintenance charge of Rs.50,250/-, total of Rs.1,02,500/- per month for a period of eleven months with effect from 01.12.1993 to 31.10.1994. M/s Sahara India through the defendant no.3, Sri D.K. Srivastava, came in possession over the said entire premises on 01.12.1993, accordingly, the memorandum of lease incorporating the terms and conditions of the tenancy was executed on 01.12.1993 in between the plaintiff and M/s. Sahara India through the defendant no.3, Sri D.K. Srivastava. While the premises in suit was under occupation of M/s Sahara India as tenant, the



plaintiff on negotiation for sale of the entire tenanted premises entered into a memorandum of understanding executed in between the plaintiff and defendant no.2, M/s. Sahara India Savings and Investment Corporation Limited through its Managing Director and authorized signatory Sri Subrata Roy on 11.01.1994. Subsequently, on receipt of earnest money, the agreement for sale was executed in between the plaintiff and the defendant no.2, M/s. Sahara India Savings and Investment Corporation Limited through the Managing Director, Sri Subrata Roy on 02.02.1994 incorporating the terms and conditions agreed upon in between the parties. Subsequently, the name of Sahara India Savings and Investment Corporation Limited changed as M/s. Sahara Indian Financial Corporation Limited. M/s. Sahara India did not pay monthly rent for any month during the period of said fixed period of lease as per the terms and conditions agreed upon for payment of rent but, however, on expiry of the said period of lease, M/s. Sahara India through the defendant no.3, Sri D.K. Srivastava, Deputy Senior Coordination Worker, Zonal Office, Patna, vacated the entire premises under tenancy and handed over the possession to the plaintiff on 31.10.1994 with undertaking to pay the entire arrears of rent for the eleven months through demand draft at the earliest. Defendant no.3, Sri D.K. Srivastava, through letter dated 01.11.1994 paid 50% rent, i.e., Rs,5,63,750/- through Bank Draft to the plaintiff. After vacating of the entire premises by M/s. Sahara, the plaintiff let out the said entire suit premises to the defendant no.1, M/s. Sahara India Housing Limited for a fixed period of eleven months with effect from 01.11.1994 to 30.09.1995

on a monthly rent of Rs.56,375/- and maintenance charge of Rs.56,375/-, total Rs.01,12,750/- per month. The defendant no.1, M/s. Sahara India Housing Limited, through Sri N.K. Pal came in possession of the entire suit premises on 01.11.1994 as a tenant for a fixed period of eleven months and, accordingly, a memorandum of lease on 1st of November, 1994 incorporating the terms and conditions of the tenancy as agreed upon in between the parties was executed. According to the agreement, the monthly rent of the premises in suit was payable in the first week of every month in advance but the defendant no.1, failed to make payment of the monthly rent as per the said terms of the tenancy and deliberately. The defendant no.1 without obtaining consent of the plaintiff deliberately and collusively brought its other sister concern's office, namely, Sahara India Financial Corporation Limited, the defendant no.2, and other sister concern/s offices in the suit premises, violating the terms of the tenancy. After 01.11.1994, the plaintiff began to make request orally as well as in writing about the payment of the balance rent of Rs.5,63,750/- of the first lease and rent of second lease. In response to the request of the plaintiff, the defendant no.3, Sri D.K. Srivastava, took up the matter admitting tenancy of its sister concern as its own wrote a letter dated 15.11.1995 to the plaintiff on behalf of Sahara India Savings and Investment Corporation Limited, defendant no.2, as its Chief Controller, agreeing to pay the balance arrear of rent of first lessee M/s. Sahara India, but denied the arrear of rent of the second lease saying that rent agreement is not mentioned in the agreement to sale while memorandum of lease and agreement to sale

has no concern each other. However, he stated in the letter that in case any problem arises, the matter will be sorted out amicably. According to letter dated 15.11.1995 written by defendant no.3, a meeting between the plaintiff and defendants was held and it was decided that the defendant no.2 shall pay the arrears of rent of the second lease period upto 30.09.1995 and, thereafter, the defendants will continue as monthly tenants on month to month basis till the defendant no.2 as per terms of the agreement to sale gets the sale deed executed and will pay the current rent with increase of 20% in every financial year, over the last rent which was payable for September, 1995, i.e., over Rs.1,12,750/- and in case of failure to pay the rent, the plaintiff shall adjust all the arrears and current rent from the earnest money paid towards purchase of the same space. Sri D.K. Srivastava as Chief Controller Zonal Office, Patna, on behalf of Sahara India Financial Corporation Limited accepting as tenant of the plaintiff paid the balance rent of Rs.5,63,750/- of the first lease vide letter dated 01.01.1996 and also paid rent for the second lease for five months amounting to Rs.5,63,750/- vide letter dated 26.07.1996, i.e. from November, 1994 to March, 1995 to the plaintiff for and on behalf of the lessee M/s. Sahara India Housing Limited, the defendant no.1. The plaintiff also accepted the defendant no.2 as its tenant and accepted the monthly rent paid by the defendant no.2. Thereafter, the defendant no.1 in collusion with its sister concern's companies, the defendant no.2 and the defendant no.3, deliberately violated the terms of tenancy incorporated under the memorandum of lease dated 01.11.1994 and failed to make

payment of the monthly rent of the premises in suit. Even the defendant no.2 paid rent of the second lease upto March 1995 but did not pay further rent even on several requests of the plaintiff, then the plaintiff as per already agreed decision began to adjust the arrears of rent and current rent from the earnest money paid by the defendant no.2, M/s. Sahara India Savings Investment Corporation Limited under agreement to sale dated 02.02.1994. The plaintiff after adjusting the earnest money towards the monthly rent of the suit premises regularly to send the accounts to the defendant no.2. The monthly rent on calculation of its yearly increasement has been adjusted by the plaintiff out of the earnest money paid by the defendant no.2 and the said sister company of the defendant no.1 and it has fully been adjusted upto part rent only of the February, 2005 but part rent for February, 2005, i.e., Rs.1,74,122/- remained due and unpaid. The defendant no.1 in collusion with defendant nos.2 and 3 and their officers are neither making payment of the monthly rent of the suit premises nor vacating the suit premises. The cause of action for the suit arose on 01.11.1994 when the defendant no.1 occupied the suit premises of the plaintiff as monthly tenant for a fixed period of eleven months, on the date when the defendant no.1 went in collusion with its other sister company and paid the rent only for five months. On much persuasion the defendants requested the plaintiff to adjust the earnest money paid by its sister's concern company, the defendant no.1, against the dues amount of the monthly rent, on the date the entire earnest money has been adjusted towards the dues of the monthly rental but in spite of request the defendants

did not pay the monthly rental of the suit premises and, lastly, on 30.04.2008, the defendants refused to vacate the suit premises and clear the dues of arrears of rent.

3. The defendant nos.1 and 2 filed separate applications under Order-VII Rule 11 (a) and (d) of the Code of Civil Procedure with prayer to reject the plaint of the plaintiff. The defendant no.1 filed its application under Order VII Rule 11(a) and (d) of the Code of Civil Procedure on 06.01.2009 with contention that this defendant entered into agreement for only eleven months tenancy with effect from 01.11.1994 with plaintiff. The defendant no.1 ceased to be the tenant of the suit premises after 31.03.1995. Thereafter, the plaintiff handed over the vacant suit premises to the defendant no.2 in part performance of the registered agreement to sale dated 02.02.1994 after receipt of 95% of the sale consideration as the proposed purchaser. In view of the terms of the fixed tenancy agreement dated 01.11.1994, the plaintiff is not entitled to claim the relief sought in the plaint after the period of limitation as no cause of action subsisted against the defendant no.1 after three years, i.e., after 1998. It is further stated that the defendant no.1 came to know that due to a dispute having arisen between the plaintiff and the defendant no.2 with regard to execution of the sale deed in pursuance to the registered agreement to sale dated 02.02.1994, the defendant no.2 by virtue of the arbitration clause contained in registered agreement to sale filed Request Case No.3 of 2001 before this Court against the plaintiff in which the plaintiff appeared and the said Request Case No.3 of 2001 was finally

disposed of by this Court vide order dated 22.04.2002 appointing Mr. Justice Bimlendu Narain Sinha (Retired) as the sole arbitrator with direction to enter into reference and to decide the matter. In view of the order dated 22.04.2002, the defendant no.2 and the plaintiff have appeared before the Arbitrator and submitted statement of claims and counter claims before the arbitrator and the arbitration proceeding is going on before the Arbitrator. As such, in view of Sections 5 and 8 of the Arbitration and Conciliation Act, 1996, not only civil court but all judicial authorities are restrained from intervening in the matter and, as such, the present suit is not maintainable.

4. The defendant no.2, M/s. Sahara India Financial Corporation Limited in its application dated 16.02.2008 filed under Order VII Rule 11 (a) and (d) of the Code of Civil Procedure contended that it would appear from the plain reading of the plaint that the plaintiff on negotiation for sale of the entire suit premises entered initially into a memorandum of understanding with the defendant no.2 on 11.01.1994 and after receiving the earnest money executed a registered agreement for sale in favour of defendant no.2 on 02.02.1994 incorporating the terms and conditions agreed upon between the parties. According to agreement to sale, the consideration amount of the suit premises was fixed Rs.4,31,52,800/- and the plaintiff received Rs.1,29,45,480/- as earnest money and the balance consideration amount was to be paid in nine equal installments of Rs.20,13,798/- and the post dated cheques were handed over to the plaintiff except the last installment of Rs.20,13,798/-, which was

payable at the time of execution of the proposed sale deed. In spite of payment of all the consideration amount except Rs.20,13,798/-, the plaintiff started making various demands. All of sudden, due to pressure from defendant no.2 to execute the proposed sale deed, the plaintiff started making demand of rent and deduction of rent from the sale consideration on a concocted story of verbal agreement of tenancy with the defendant no.1. Since the agreement for sale dated 02.02.1994, Annexure-1 was having an arbitration clause, the defendant no.2 filed Request Case No.3 of 2001 in this High Court against the plaintiff, in which the plaintiff appeared, which was disposed of vide order dated 22.04.2002 (Annexure-2) by this High Court appointing Mr. Justice Bimlendu Narain Sinha (Retired) as the sole Arbitrator with direction to enter into reference and to decide the matter, plaintiff and defendant no. 2 appeared before the Arbitrator filed statements whereafter framing issues witnesses are being examined by the defendant no.2. The plaintiff has clearly stated in para-7(2) of his written statement-cum- claim that the petitioner had agreed at the time of negotiation that so long they do not get the sale deed executed by the opposite party after paying all amounts as per terms of agreement, their sister concern will continuing in the building as tenant and for that if they do not enter into a fresh lease agreement then they shall be tenant on monthly rent on month to month basis with 20% increase in rent in every financial year over the last paid rent and on failure to pay the rent, the rent shall be adjusted by opposite party (seller) from consideration money paid to the opposite party. From perusal of the plaint and the entire annexures to



the application, it would appear that the entire facts and circumstances that the matter in issue involved in the present eviction suit are the same before the arbitration in all respects but the plaintiff with malafide intention has purposely concealed those facts of arbitration proceeding which is going on before the Arbitrator and has filed this case before this Court. In view of the Arbitration Clause as well as the pendency of arbitration proceeding before the Arbitrator the intervention of the judicial authority is barred under Sections 5 and 8 of the Arbitration and Reconciliation Act, 1996. As such, the plaint of the present suit is fit to be rejected under Order VII Rule 11 (a) and (d) of the Code of Civil Procedure.

5. After hearing the parties on the applications dated 06.01.2009 and 16.12.2008 filed on behalf of the defendant nos.1 and 2 under Order VII Rule 11(a) and (d) of the Code of Civil Procedure, the learned Sub Judge-IV, Patna, allowed the aforesaid applications of the defendant nos.1 and 2, rejecting the plaint of the plaintiff-appellant arriving at the conclusion that the plaintiff has no cause of action to file the eviction suit against the defendants as also the suit is barred under Sections 5 and 8 of the Arbitration and Reconciliation Act, 1996.

6. Learned counsel for the plaintiff-appellant made submission that it would appear from bare reading of Order VII Rule 11 of the Code of Civil Procedure that while considering the application under Order VII Rule 11 of the Code of Civil Procedure, the court has to examine the averments of the plaint to find out whether the suit appears from the statement in the plaint to be barred by any law or the plaint does not



disclose the cause of action to reject the plaint but the learned trial court has allowed the applications of the defendant nos.1 and 2 filed under Order VII Rule 11(a) and (d) of the Code of Civil Procedure taking into consideration the agreement to sale dated 02.02.1994 executed by the plaintiff in favour of the defendant no.2, the copy of the order dated 22.04.2002 passed by this Court in Request Case No.3 of 2001 as also the claim and counter claim filed by the plaintiff and defendant no.2 before the Arbitrator, which is beyond the ambit of the provisions of the Order VII Rule 11 of the Code of Civil Procedure. In support of its submission, learned counsel for the appellant placed reliance on a decision in the case of **Bhau Ram Vs. Janak Singh and Others {2012(4) BBCJ IV- 301}**. Learned counsel for the appellant further made submission that the learned trial court on perusal of the agreement to sale dated 02.02.1994 filed on behalf of the defendant no. 2 arrived at the conclusion that the possession of the suit premises has been given to the defendant no.2 in the light of the agreement to sale dated 02.02.1994 executed by plaintiff to defendant no. 2 while there is nothing in the agreement to sale to show about the delivery of possession of the suit premises to the defendant no.2 on the basis of agreement to sale dated 02.02.1994.

7. On the other hand, learned counsel for the respondents fairly made submission that under Order VII Rule 11 of the Code of Civil Procedure, only the averments of the plaint is to be considered for rejecting the plaint nor the written statement or the other materials brought on the record but further submitted that it would appear from perusal of the plaint



that the suit is based on the memorandum of lease executed on 01.12.1993 regarding the tenancy of M/s. Sahara India through the defendant no.3 for 11 months and also again the suit premises leased to the defendant no.1 through the memorandum of lease dated 01.11.1994 but both the memorandum of lease were not filed by the plaintiff-appellant at the time of filing the plaint which ought to be filed under Order VII Rule 14(1) of the Code of Civil Procedure. As such, on this score alone, the plaint itself deserves to be rejected and placed reliance on a decision in the case of **Church of Christ Charitable Trust and Educational Charitable Society represented by its Chairman Versus Ponniamman Educational Trust represented by its Chairperson/Managing Trustee {2012(8) SCC 706}**. Learned counsel for the respondents further made submission that the lease of eleven months regarding the suit premises in favour of the defendant no.1, M/s. Sahara India Housing Limited expired in the month of October, 1995. As such, the suit ought to be filed by the plaintiff for eviction and recovery of arrears of rent within three years to October, 1995 but the suit has been filed in year 2008. As such, the suit is barred by law of limitation. It is also submitted that the plaintiff has cleverly drafted the plaint about the adjustment of the arrears of rent and current rent to the earnest money paid by the defendant no.2 at the time of execution of the sale deed dated 02.02.1994 to the plaintiff only to show the cause of action within limitation period.

8. From perusal of the Order VII Rule 11 of the Code of Civil Procedure and the decision of the Hon'ble Apex Court in the case of



Bhau Ram (supra), while considering the application under Order VII Rule 11 of the Code of Civil Procedure, the court has to examine the averments of the plaint and not the written statement or other materials brought on the record to reject the plaint. But it appears from the impugned order that the learned trial court rejected the plaint on taking into consideration the copies of sale deed dated 02.02.1994, the order dated 22.04.2002 passed in Request Case No.3 of 2001 and the claim and counter claim of the plaintiff and defendant no. 2 submitted before the Arbitrator, as filed by the defendant no. 2 arriving at the finding that the issues in the present case and in Arbitration Case are in respect to the same property and, as such, the plaintiff has no cause of action to file the suit and the suit is also barred by Sections 5 and 8 of the Arbitration and Reconciliation Act, 1996. As such the order impugned is not within the purview under Order VII Rule 11(a) and (d) of the Code of Civil Procedure.

9. The trial court records show that the plaintiff presented the plaint of Eviction Suit No.19 of 2008 before Court of the Sub-Judge on 09.05.2008 without document. The photocopy of the memorandum of lease dated 01.12.1993 executed in between the plaintiff and M/s. Sahara India and photocopy of memorandum of lease dated 01.11.1994 executed in between the plaintiff and the defendant no.1, M/s. Sahara India Housing Limited, with the list of documents were filed on 17.06.2008. Thereafter eviction suit was admitted on 02.07.2008. As such, at the time of admission of suit and passing the impugned order, the photocopies of the aforesaid memorandum of lease were on the record. The terms and

conditions of the memorandum of lease dated 01.12.1993 executed in between the plaintiff and M/s. Sahara India, regarding payment of rent and period of lease have been briefly detailed in paragraph-2 of the plaint. Similarly, the terms and conditions of the memorandum of lease dated 01.11.1994 executed in between the plaintiff and the defendant no.1, in respect to rent and the period of lease have been disclosed in paragraph-7 of the plaint.

10. In the case of **Church of Christ Charitable Trust and Educational Charitable Society (supra)**, on which reliance has been placed by the learned counsel for the respondents the appellant/first defendant Society, the owner of the property, entered into an agreement on 07.01.1990 for sale of the property in favour of one S. Velayutham, the second defendant in the suit on condition that the transaction should be completed within six months after obtaining clearance from the Income Tax and other departments and also received an amount of Rs.5 lakhs as an advance. On 19.10.1990, the first defendant/appellant Society executed a registered power of attorney in favour of the second defendant limited for the purpose of empowering him to represent the Society before the statutory authorities. On 15.10.1991, the first defendant/appellant society revoked the registered power of attorney executed in favour of the second defendant by a registered document detailing various reasons. On 19.11.1991, as the second defendant failed to comply with the commitments made, the first defendant/appellant society cancelled the agreement for sale dated 07.01.1990. Thereafter, the second defendant



instituted CS No.1576 of 1991 against the first defendant/appellant society before the Madras High Court for specific performance of the agreement dated 07.01.1990 with injunction application restraining the first defendant/appellant society from alienating the property. The said suit was withdrawn in the year 2006 by the second defendant. M/s. Karthik Granites (P) Limited, a sister concern of the responding herein filed CS No.915 of 1994 before the Madras High Court for specific performance of the agreement to sell on the ground of alleged agreement entered into with the second defendant which was dismissed as settled on the basis of the memorandum of understanding dated 13.02.1997. Again on 04.08.2001, a memorandum of understanding was entered into between the respondent herein and the second defendant in which the second defendant agreed to sell the remaining portion of the property to the respondent, sister concern of M/s. Karthik Granites (P) Limited as the agreement holder and power of attorney agent of the appellant. The plaintiff-respondent filed CS No.115 of 2005 for specific performance of the agreement dated 04.08.2001 and also OA No. 132 of 2005 in the said suit praying for an interim injunction restraining the defendants from alienating the suit property pending disposal of the suit. The first defendant/appellant Society filed Application No.3560 of 2005 under Order 7 Rule 11 of the Code of Civil Procedure praying for rejection of the plaint before Madras High Court. On 18.01.2006, the plaintiff-respondent filed Application No.179 of 2006 for amendment of the plaint. The learned Single Judge rejected the plaint in respect of the first defendant/appellant and directed that the suit can be



proceeded against the second defendant. The applications of the plaintiff-respondent for interim injunction and amendment of the plaint were also rejected. The aforesaid order was challenged before the Division Bench. The Division Bench vide order dated 16.08.2011 while dismissing the appeal against the order rejecting the applications for amendment and for interim injunction, allowed the appeal against the rejection of the plaint. The first defendant/appellant society challenged the aforesaid order before the Hon'ble Apex Court by filing Civil Appeal No.4841 of 2012. The Hon'ble Apex Court dismissed the order of the Division Bench of the Madras High Court dated 16.08.2011, restoring the order of the learned Single Judge and held that the Order VII Rule 11 of the Code of Civil Procedure mandates that the plaintiff has to produce the document on which the cause of action is based. Therefore, the respondent-plaintiff has to produce the power of attorney when the plaint is presented and if he was not in possession of the same, he had to state as to in whose possession it is. In the present case only the agreement between the plaintiff and defendant no.2 has been filed alongwith the plaint under Order VII Rule 14(1). If the respondent-plaintiff was not in possession of the power of attorney, it being a registered document, he should have filed a registration copy of the same. The aforesaid decision would not be applicable in the facts and circumstances of the present case as both the memorandum of lease were filed by the plaintiff/appellant on 02.07.2008 before the admission of the suit.

11. As far as the submission of the learned counsel for the

defendants that eviction suit ought to be filed within three years for eviction of defendants and recovery of arrears of rent within three years to October 1995 when the defendant no. 1 defaulted the payment of rent is concerned, the limitation period of three years as provided under Article 52 of Limitation Act is relating to recovery of rent not filing the suit for eviction of tenant. Moreover, in the plaint at paragraph-14, it has specifically been detailed that the rent in respect of the suit premises was adjusted by the plaintiff till February, 2005 to the earnest money paid by the defendant no.2 to the plaintiff at the time of execution of agreement to sale dated 02.02.1994 as per talk and agreement with defendant no. 3. As such, I find no substance in the submission of the learned counsel for the defendants-respondents.

12. Under the facts and the circumstances of the case and the discussions made above, the impugned order dated 15.09.2011 passed in Eviction Suit No.19 of 2008 by the learned Sub Judge-IV, Patna, is set aside and this appeal is allowed with a direction to the learned Sub Judge-IV, Patna, to proceed with the suit in accordance with law. However, there would be no order as to costs.

(Rajendra Kumar Mishra, J)

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